

PETITIONER:
STATE OF RAJASTHAN & ORS.

Vs.

RESPONDENT:
ANIL KUMAR SUNIL KUMAR & PARTY & ANR.

DATE OF JUDGMENT: 03/04/2000

BENCH:
S.R.Babu, R.C.Lahoti

JUDGMENT:

R.C. Lahoti, J.

M/s Anil Kumar Sunil Kumar & Party, the respondent no.1 in these appeals had filed a writ petition before the High Court of Rajasthan impleading the State of Rajasthan, the Excise Commissioner and the other officers of the Excise Department as respondent nos.1 to 4, also M/s Ganganagar Sugar Mills Ltd. as respondent no.5. For the sake of convenience the parties shall be referred to as they were arrayed in the writ petition before the High Court.

The Excise Commissioner, Rajasthan, Udaipur vide tender notice dated 6.2.1991 invited tenders for grant of exclusive privilege licences (E.P.L.) under Rules 67(I) and 67 (K) of the Rajasthan Excise Rules, 1956 read with Rule 3 of the Rajasthan Foreign Liquor (Grant of Wholesale Trade and Retail Licence) Rules, 1982 for sale of country liquor for the whole of Rajasthan (excluding tribal area), retail sale of beer, retail and wholesale sale of Indian-Made Foreign Liquor for shops and group of shops/sub-shops for financial years 1991-92 and 1992- 93. One of the group of shops forming subject matter of the tender notice was designated as Sirohi group of shops falling in excise district of Jalore for the sale of country liquor. Thereunder fell 35 main shops and 48 sub-shops as notified. The total amount of reserve price for the group of shops as notified was as under:- Rs. 1. Country Liquor 2,42,94,800/- 2. I.M.F.L. (Retail) 2,39,29,200/- 3. Retain sale of beer 21,72,900/- 4. Wholesale of I.M.F.L. 3,87,900/- ----- 5,17,84,800/- -----

The petitioners submitted tenders for the grant of exclusive privilege licences of all the aforesaid heads as under :- 1. Country Liquor 2,42,94,800/- 2. I.M.F.L. (Retail) 3,42,55,511/- 3. Retail sale of beer 21,72,900/- 4. Wholesale sale of I.M.F.L. 3,87,900/- ----- 6,11,11,111/- ----- The petitioners tenders being the highest were accepted. They were granted licence for the retail sale of country liquor for Sirohi group of shops amongst other licences. We are concerned in this appeal with the abovesaid licence relating to Sirohi group of shops.

According to the petitioners they were grantees of the exclusive privilege licence of shops for the local area comprising of Sirohi Revenue District excluding the Janjati (tribal) area. Abu Road and Mount Abu Municipal areas, including the Janjati area as notified by the Presidential Order known as the Scheduled Areas (Rajasthan State) Order, 1981, formed part of Sirohi Revenue District. The District Excise Officer, Sirohi did not allow or permit the petitioners to open their sub-shops of country liquor in the municipal areas of Abu Road and Mount Abu on the ground that those two areas were included in the Janjati area. This led to the shortfall in the sale of country liquor as they could not fulfil the minimum demand by lifting the quantum of exclusive privilege for the fiscal years 1991-92 and 1992-93. Instead M/s Ganganagar Sugar Mills Limited, the respondent no.5 (hereinafter referred as the Sugar Mills, for short) which were holding the licence for selling by retail the country liquor through their five shops and sub-shops in the Abu Road and Mount Abu municipal areas for and upto the year ending 31.3.1991 were renewed the licence for the fiscal years 1991-92 and 1992-93 whereunder the Sugar Mills continued to operate their shops in those areas. The petitioners sought for the following reliefs :- (i) a declaration that the renewal of the licences granted by the District Excise Officer, Sirohi in favour of the Sugar Mills for the financial years 1991-92 and 1992-93 for the retail sale of country liquor in the municipal areas of Mount Abu and Abu Road was illegal and void; (ii) the policy decision of the State, if any, which prohibited the sale of country liquor in the above-said areas by any private licensee other than the Sugar Mills was illegal and void; and (iii) that the petitioners be held entitled to vend country liquor by retail sale in the municipal areas of Mount Abu and Abu Road for the said years and the amount of due price and margin money paid by the Sugar Mills, respondent no.5 to the State Government be adjusted towards the exclusive privilege amount payable by the petitioners.

According to respondent nos.1 to 4, the petitioners had submitted tender for 35 shops and 48 sub-shops included in the Sirohi group of shops. The petitioners were not granted exclusive privilege licence for vending country liquor for the entire Sirohi Revenue District. The tender notice clearly specified the group of 35 shops and 48 sub-shops designated as Sirohi group of shops which is tried to be confused with shops in the entire Sirohi Revenue District. The petitioners knew it well from the very beginning that in so far as the areas of Abu tehsil including Abu Road and Mount Abu were concerned licences for selling country liquor by retail were being granted invariably over a number of years in favour of the Sugar Mills which was a Government of Rajasthan undertaking. No private party was ever allowed such a privilege by way of licence. It was the policy of the State, well within the knowledge of the petitioners, that to protect the tribals from exploitation at the hands of the private licensees, sale by private licensees was not allowed in the tribal areas. The licences which were held by the Sugar Mills for the period expiring on 31.3.1991 were renewed for the next two financial years consistently with the policy of the State. Exclusive privilege for vending country liquor by licence in the municipal areas of Abu Road and Mount Abu neither formed the subject-matter of the tender notice nor could it have been. The petitioners did not submit tenders

for Mount Abu and Abu Road. The licences issued to the petitioners did not relate to any shop at Mount Abu or Abu Road insofar as vending of country liquor by retail sale is concerned; on the contrary the licences granted to the petitioners for sale by retail of IMFL included shops in the towns of Mount Abu and Abu Road. The petitioners made a default in payment of the fee for exclusive privilege grant. On 31.12.1991 an amount of Rs.98,30,468 was outstanding against the petitioners. The petition is an attempt to wriggle out of the petitioners obligation to pay the amount by pleading a false and imaginary ground.

It is not disputed nor could it have been that the declared policy of the State Government consistently with the directives issued by the Central Government in this regard was not to allow private parties as licensees for vending country liquor by retail in the tribal areas. Eversince 1.4.1982 Abu road and Mount Abu were not allowed to have any private contractor and retail sale of country liquor in the said areas was being arranged through the licences granted to the Sugar Mills, a Government undertaking.

The respondents also raised a few preliminary objections to the maintainability of the writ petition submitting that the petition raised disputed questions of fact and the relief sought for arose out of contractual obligations voluntarily incurred by the petitioners and so a writ petition was not an appropriate remedy for the grant of the reliefs asked for.

A few relevant dates which are not in dispute may be noticed as they will have a material bearing on the adjudication of the dispute. The writ petition was filed on 16.3.1992 initially before the Jaipur Bench of the Rajasthan High Court. On 27.4.1992 the respondents filed their counter-affidavits contesting that petition. On 28.8.1992 the writ petition filed by the petitioners was allowed by a learned Single Judge. The decision was put in issue by the respondents before the Division Bench of Rajasthan High Court by filing a writ appeal. On 15.1.1993 the appeal was allowed upholding the plea of the respondents that the Jaipur Bench of Rajasthan High Court did not have territorial jurisdiction to entertain the writ petition. The writ petition was directed to be returned to the petitioners for being presented at Jodhpur, the principal seat of the Rajasthan High Court. Accordingly the writ petition was returned to the petitioners and re-filed on 21.1.1993 at Jodhpur.

After hearing the parties, the learned Single Judge directed the petition to be dismissed. Briefly stated, the learned Single Judge upon evaluation of several documents brought on record by the parties upheld the pleas raised by the respondents. The learned Single Judge found that the notice inviting tenders and the tender submitted by the petitioners were both for the grant of exclusive privilege for a group of shops termed as Sirohi group of shops which comprised of 35 main shops and 48 sub-shops. The petitioners were trying to confuse Sirohi group of shops with shops in the revenue district of Sirohi. The notice inviting tenders, the tenders submitted by the petitioners and the licence issued to the petitioners all related to Sirohi group of shops. The 35 main shops and 48 sub-shops were situated only in four tehsils of District Sirohi namely

Revdar, Pinvara, Sirohi and Sheoganj. None of the said shops or sub-shops was situated in Mount Abu and Abu Road which formed part of Abu Road tehsil. This was in conformity with the State policy of 1981 adopted in response to Central Government directives. The petitioners have been in the liquor trade since long. At the time of submitting their tenders they knew it well that in Mount Abu and Abu Road licences had never been granted to any private contractors for vending country liquor. Such licences in Mount Abu and Abu Road were invariably issued in favour of the Sugar Mills, a Government undertaking, ever since 1st April, 1982. The entire Abu Road tehsil including the areas of Abu Road and Mount Abu was declared a scheduled area under the Presidential notification. Merely because Abu Road and Mount Abu were constituted as municipality under the Rajasthan Municipality Act, it could not be held that these local areas were excluded from the scheduled area declared by the President of India. On these findings the learned Single Judge held the petitioners not entitled to any relief and directed the petition to be dismissed.

The petitioners preferred an appeal before the Division Bench. The only question raised before the Division Bench was as to the interpretation of local area for which the petitioners were granted the licence. Having made an evaluation for itself of the documents brought on record the Division Bench held that Mount Abu and Abu Road were included in the area to which the licences granted to the petitioners related and the conduct of the excise department treating Mount Abu and Abu Road to be scheduled areas was a mistake of law under which both the parties were belabouring. The Division Bench further opined that though the petitioners did not apply for opening any sub-shops for the sale of country liquor at Mount Abu and Abu Road from April 1991 till February 1992, but merely from that omission it could not be inferred that they had voluntarily waived their right to open sub-shops in those areas. They had a legal right and consequences flowing from the denial of the legal right of the petitioners must follow. Consequently, the appeal filed by the petitioners was allowed and the demand raised against the petitioners was quashed.

Aggrieved by the judgment of the Division Bench, the State of Rajasthan have come up in appeal by special leave to this Court.

Having heard the learned counsel for the parties, we are of the opinion that the appeal deserves to be allowed and the judgment of the Division Bench of the High Court deserves to be set aside.

The policy decision of the State Government contained in its G.Os. dated 18.9.1981 and 7.2.1991 is not in dispute. No fault can be found with the said policy decision whereby in the interest of tribals the State Government had, consistently with the directives issued by the Central Government, taken a policy decision not to permit sale by private licensees in such areas as were populated by the tribals so as to protect them from likely exploitation at the hands of private liquor vendors. Licence to sale country liquor by retail was given only to the Sugar Mills which was a Government undertaking. The price of the country liquor to be sold by the Sugar Mills was fixed while the private licensees were free to sell the liquor at whatever price they liked. Such policy protected

the tribals and weaker sections of the population in the scheduled areas. The controversy which was sought to be raised by the petitioners before the High Court by filing the writ petition related to the interpretation of several documents so as to find out whether Mount Abu and Abu Road areas were intended to be put to auction by the tender notice and whether the petitioners had submitted their tenders so as to include those areas and whether the licence issued to them covered those areas or not. The learned Single Judge by carefully analysing the documents brought on record held against the petitioners. In appeal, the Division Bench by evaluating the same set of documents drew factual inferences in favour of the petitioners. The petitioners had raised highly disputed questions of fact and had also sought for a relief against a contractual liability which was sought by the State to be enforced against them. However, we are of the opinion that it is not necessary for us to enter into the abovesaid disputed questions of fact, re-appreciate and re-evaluate the documentary evidence brought on record and to record a finding on the correctness or otherwise of the inferences drawn by the learned Single Judge and the Division Bench. We are unhesitatingly of the opinion that the conduct of the petitioners disentitled them to the grant of any relief in exercise of discretionary writ jurisdiction of the High Court.

It cannot be denied nor has it been that ever since 1.4.1982 continuously and uninterruptedly the Sugar Mills only were having the licence for sale of country liquor by retail in Mount Abu and Abu Road tehsils. Even on 6.2.1991 when the tender notice was issued by the Excise Commissioner, the licence granted in favour of the Sugar Mills was already in operation. The petitioners were well aware of the policy of the State Government having been in this trade for long. Right from April 1991 till February 1992 the petitioners never applied for opening any sub-shops of theirs for the sale of country liquor at Mount Abu and/or Abu Road, though they had submitted several applications from time to time for obtaining permission of the District Excise Officer for opening shops/sub-shops in various areas covered by their licences. They were seeking approval of the location of the shops/sub-shops at the places situated in 4 tehsils of Sirohi District excluding Abu Road tehsil. For a period of about 11 months, the petitioners exploited their licences and enjoyed the exclusive privilege of selling by retail the country liquor in Sirohi District excluding Mount Abu and Abu Road tehsils. It is only when they fell into arrears of the licence fee and a demand was raised against them that on 4.3.1992 they raised a plea of having been wrongfully excluded from exercising the exclusive privilege for sale by retail of country liquor in Mount Abu and Abu Road areas and for that purpose served a notice seeking the withdrawal of the demand raised by the State and demanding permission in future for opening sub-shops in Mount Abu and Abu Road Municipal areas. The plea raised in the notice dated 4.3.1992 that the petitioners had become aware of the correct factual and legal position by making enquiries in the last week of February 1992 was apparently false and highly belated. The plea that on further enquiries being made and legal advice being sought it has transpired that Mount Abu and Abu Road were not included in the Janjati Kshetra (tribal area) was raised by the petitioners by making an averment in that regard in the rejoinder which they had filed on 15.2.1993. The plea was not raised in the writ petition as originally

filed. Yet another very material fact which exposes the falsity of the petitioners plea is that the reserve price fixed by the State for exclusive privilege for vending country liquor for Sirohi group of shops was based on the previous years figures of sales of the notified 35 main shops and 48 sub-shops, wherein the figures of sales of shops at Mount Abu and Abu road were not included. This plea raised by the respondents was supported by the documents of unimpeachable veracity brought on record and duly supported by affidavit.

In State of Orissa Vs. Nayaran Prasad 1996 (5) SCC 740 this Court has, in the backdrop of similar facts, held :- A person who enters into certain contractual obligations with his eyes open and works the entire contract, cannot be allowed to turn round and question the validity of those obligations or the validity of the Rules which constitute the terms of the contract. The extraordinary jurisdiction of the High Court under Article 226, which is of a discretionary nature and is exercised only to advance the interests of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in their favour.

In the case at hand we find that the petitioners are trying to wriggle out of a contractual obligation by raising a plea which was highly belated and clearly an afterthought. They knew it very well that they were not bidding for a privilege by way of licence to sell country liquor by retail in the areas of Abu Road tehsil nor could they have had that privilege in view of the States policy decision whereunder a Government undertaking only was allowed to operate its licence in those areas. They having been faced with a demand raised against them appear to have looked into several documents and found out scope for raising plea on the phraseology employed by the State or its officers in different documents which were brought on record. Such a plea could not be allowed to be entertained. The learned Single Judge was right in turning down the plea raised by the petitioners and thereby dismissing the writ petition. In our opinion, the Division Bench ought not to have interfered with the judgment of the learned Single Judge.

The learned counsel for the writ-petitioners lastly submitted that the principal amount due and payable by them on account of issue price and margin money has been paid by them but a demand of Rs.8 lakhs is stated to be outstanding against them, which amount consists of interest only which if insisted on being paid, would be ruinous to the petitioners. The amount outstanding against the petitioners as per details contained in the letter of the Excise Commissioner, Rajasthan, Udaipur dated 26.11.1994 was as under:-

Principal amount outstanding for Deshi Madira (Country Liquor) Rs.75,55,355-00

Interest on outstanding dues Rs.10,81,323-00

Bha.Ni.Vi.M. Rs. 3,91,455-00 -----

Total : Rs.90,28,133-00 -----

Pursuant to the judgment passed by the Division Bench of the High Court on 23.2.1994, the petitioners had made an

application before the Excise Commissioner and the latter had vide order dated 25.5.1994, after adjusting the amount of issue price and margin money paid by Sugar Mills from 29.8.1982 to 5.2.1993, computed the above-said amount, which amount of Rs.90,28,133-00 has since been realised by the Department. Upon operation of the judgment of the Division Bench of the High Court of Rajasthan having been stayed by this Court, the Excise Commissioner withdrew the relief of rebate of Rs.29,81,159-00 which was allowed to the petitioners pursuant to the Division Bench judgment of the High Court. Thereafter the petitioners have deposited under protest a further amount of Rs.21,81,159-00 (out of Rs.29,81,159-00) between 10.9.1997 and 23.9.1997. Thus, it is only an amount of Rs.8 lakhs on account of interest calculated at the rate of 12% per annum which still remains to be paid by the petitioners. In our opinion, looking to the nature of the controversy raised and the stages through which the litigation has travelled up to this Court, i.e. the petitioners having succeeded before the single Judge earlier, which judgment was set aside on the ground of want of territorial jurisdiction only and again from the Division Bench of the High Court which judgment was stayed by this Court and further keeping in view the payments made by the petitioners to the Excise Department during the pendency of the litigation, we deem it proper to direct that no further amount should now be realised from the petitioners. It may be placed on record that on behalf of the State of Rajasthan the factual position as to the amount of dues and the heads under which it has been demanded and substantially paid, as stated in this para, specially the fact that the outstanding amount is only Rs.8 lakhs and is attributable to demand on account of interest has not been disputed.

The appeals are allowed. The judgment of the Division Bench of the High Court dated 23.2.1994 is set aside. The judgment of the learned single Judge dated 26.5.1993 is restored. However, for the reasons stated in the preceding para, it is directed that the amount of Rs.8 lakhs, which is on account of interest, shall not be realised from the writ petitioners. No order as to the costs.